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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,720

08/13/2003

Feng-Yi Wang

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05/19/2005

EXAMINER

NORTH AMERICA INTERNATIONAL PATENT OFFICE (NAIPC)

STEIN, JULIE E

P.O. BOX 506

MERRIFIELD, VA 22116

ART UNIT

PAPER NUMBER

2685

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,720	<b>Applicant(s)</b> WANG, FENG-YI	
	<b>Examiner</b> Julie E. Stein, Esq.	<b>Art Unit</b> 2685	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites that during step (b) the code is “capable” of being transmitted, not that the code *is* transmitted. Therefore, the claim does not actively recite a method step.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admissions and U.S. Patent Application Publication U.S. 2002/0004386 to Simon.

Applicant admits all the steps of independent claim 1, including a method for transmitting data to a second cellular phone (Applicant's specification, paragraph 7), wherein the second cellular phone includes a second flash memory and a random access memory (RAM) (Applicant's specification, paragraph 7 and 9), the method comprising, transmitting the receiving program code (client program) to the RAM of the second cellular phone (Applicant's specification, paragraph 9), and transmitting the application program code (program code) to the second flash memory of the second cellular phone (paragraph 6 and 7).

However, Applicant does not admit a first cellular phone having a first flash memory having a transmitting program code, a receiving program code, and an application program code. But, Applicant does admit that it is known to transfer various types of codes to cellular phones in order to update programs/software on the cellular phones. See Applicant's specification, paragraph 6. In addition Simon teaches a method of updating a cellular phone using a second cellular phone. See Figure 1. Simon also teaches that the update is stored on a storage device (45) such as flash memory in the cellular phone. See paragraph 19.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to use a cellular phone as taught by Simon to update a second cellular phone as taught by Simon and Applicant in the manner admitted by Applicant because the need to update software on cellular phones is well known in the art and the use of a cellular phone instead of a computer to update a second cellular phone allows the use of simpler infrastructure. See Simon paragraph 6.

Applicant's Admissions in view of Simon also teach all the steps of dependent claim 2, wherein during step (b) both the transmitting program code and the receiving program code stored in the first flash memory are capable of being transmitted to the second flash memory. See Simon paragraph 23.

Applicant's Admissions in view of Simon also teach all the steps of dependent claims 3 and 4, including wherein both the application program code and the receiving program code in the first cellular phone are transmitted to the second cellular phone through a port for connecting a transmission line. See Simon Figure 1 and paragraph 22.

Applicant's Admissions in view of Simon also teach all the steps of dependent claim 5, including wherein the port is an earphone jack. See Applicant's specification, paragraph 7.

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admissions in view of Simon as applied to claim 1 above, and further in view of U.S. Patent No. 6,529,747 to Toba.

Applicant's Admissions in view of Simon teach all the steps of dependent claim 6, except wherein the second cellular phone further comprises a read only memory (ROM) for storing a boot code for executing a start procedure. However, Toba teaches that it is well known that cellular phones contain ROMs and that ROMs provides storage for boot programs and control programs, which perform various control operations. See column 4, lines 1 to 8. Therefore, it would have been obvious to one of ordinary skill in the art

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at the time the invention was made, to understand that a ROM in the second cellular phone would store boot code.

Applicant's Admissions in view of Simon and further in view of Toba teach all the steps of claim 7, including wherein the read only memory further stores a selecting procedure code (Toba, column 4, lines 1 to 8, control programs) for selecting to execute the boot code or to perform a download procedure during the start procedure execution so as to download both the receiving program code and the application program code stored in the first flash memory to the second cellular phone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to understand that the ROM as taught by Toba would have a selecting function that would either boot the second phone or download the updates based on the present status of the phone because the control programs perform various control operations, which would include these functions. *Id.*

7. Claims 8 to 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admissions in view of Simon as applied to claim 1 above, and further in view of U.S. Patent No. 6,879,847 to Kato et al.

Applicant's Admissions in view of Simon teach all the steps of dependent claim 8, except wherein the second flash memory stores a start procedure code for executing a start procedure of the second cellular phone. However, Kato teaches that it is well known that flash memory can store boot code that can be used boot up a mobile phone, program code used to run the mobile phone and data used by the program code. See column 1, lines 13 to 17. Therefore, it would have been obvious to one of ordinary skill

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in the art at the time the invention was made, to understand that the flash memory of the second cellular phone could contain boot code to start the second cellular phone as taught by Kato. *Id.*

Applicant's Admissions in view of Simon and further in view of Kato teach all the steps of dependent claim 9, including wherein the second flash memory further stores a selecting procedure code (Kato, column 1, lines 13 to 17, program code) for selecting to execute a boot code or to perform a download procedure during the start procedure execution so as to download both the receiving program code and the application program code stored in the first flash memory to the second cellular phone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to understand that the flash memory as taught by Kato would have a selecting function that would either boot the second phone or download the updates based on the present status of the phone because the program code is used to run the mobile phone. *Id.*

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie E. Stein, Esq. whose telephone number is (571) 272-7897. The examiner can normally be reached on M-F (8:30 am-5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JES

*Nguyen Vo*  
5-16-2005

**NGUYENT.VO**  
**PRIMARY EXAMINER**